

Executive Summary of Independent Review Panel (IRP) Findings and Recommendations from the FTAA Demonstration Complaints Inquiry

Background:

People, who came to downtown Miami from November 18th to the 21st, 2004, experienced an unprecedented police presence that elicited citizen commentary ranging from celebration of “The Miami Model” of Law Enforcement preparation for large scale demonstrations to complaints of overreaction representing “A Police State.”

The Independent Review Panel (IRP) is a mechanism for external community fact-finding and dispute resolution. The nine-member volunteer Panel Members conduct independent reviews and hold public hearings concerning serious complaints against Miami-Dade County Departments.

The IRP conducted multiple public hearings and fact-finding meetings regarding the actions of the Miami-Dade Police Department and the Miami Dade Corrections and Rehabilitation Department during the FTAA ministerial. Panel members listened carefully to all sides. The IRP review included extensive reading of after action reports and news media articles as well as the viewing of video and photographic evidence provided by demonstrators and the Miami-Dade Police Department (MDPD).

The Panel commends MDPD and various civilian groups that helped us by providing evidence. MDPD is a police agency that cooperated with civilian oversight at every stage of this investigation. The exception being that police FTAA Operational Plans were not provided based on a public records exemption found in Chapter 119.07(3)(d).

The IRP and the City of Miami’s Civilian Investigative Panel (CIP) conducted an historic joint meeting and shared information throughout the period of inquiry. The IRP expresses gratitude to all the demonstrators and police personnel who stepped forward to do their civic duty and contribute evidence for consideration. The IRP findings and recommendations are the product of a deliberate and thorough review of the available evidence.

The members of the Independent Review Panel strenuously condemn and deplore the unrestrained and disproportionate use of force observed in Miami during the FTAA. Nationally televised images of police violence against non-violent protestors stained our community. For a brief period in time, Miami lived under martial law. Civil rights were trampled and the socio-political values we hold most dear were undermined. The right of every citizen to publicly proclaim their approval or disdain for the actions of their elected leaders in a peaceful manner lies at the heart of what it means to be an American. The curtailment of that right is the first step from freedom towards bondage.

The IRP commends those police departments and police officers who wisely limited their use of force to situations where all alternatives had been exhausted. Theirs is the honor of preserving those values which we cherish. Most importantly, we extend our heartfelt apologies to the

visitors who came to our city to peaceably voice their concerns, but who were met with closed fists instead of open arms.

The readers that are interested in whether constitutional rights were violated are encouraged to track civil rights litigation that has been filed in the federal courts, available for review on the internet. The findings and recommendations that follow are focused on the jurisdiction of the IRP, an advisory body mandated to do “external community fact-finding and dispute resolution” with the aim to have a constructive impact on relevant County policy and practice.

The volunteers that serve on the IRP offer the County government the following citizen oversight of law enforcement in the spirit of constructive conflict management focused on the County’s vision and improvements in “Delivering Excellence Every Day”.

Findings:

Police Training, Organization and Deployment

1. There was no “Unified FTAA Command,” however the City of Miami Police Department (MPD) was the lead law enforcement agency. *MDPD did not cede command to the MPD or any other command. MDPD did respond to MPD requests.*
2. The downtown area was divided into four geographical command areas with primary responsibility assigned to four specific law enforcement agencies:

North – Miami-Dade Police Department (MDPD);
Central – Miami Police Department (MPD);
South – Florida Highway Patrol (FHP);
Bayside Marketplace – Hialeah Police Department.

Broward Sheriff’s Office (BSO) was responsible for area north of I-396 and west of I-95

Approximately 35 other federal, state and local law enforcement agencies were also part of the joint FTAA security operations. *MPD supervised the work of several “partner” police agencies. The Miami Citizens Investigative Panel (CIP) is investigating the actions of MPD.*

3. The vast majority of MDPD personnel performed their duty without incident and conducted themselves in a professional manner under trying circumstances. *MDPD officers spent long hours in special gear waiting to be called into action and generated a small number of individual citizen complaints.*
4. Extensive pre-FTAA ministerial training was conducted with emphasis on preparation for violent protestors. *MDPD spent 40,000 “man hours” preparing for this event yet the training materials in the after-action report document little pertaining to the protection of citizen rights of free expression. A document entitled “FTAA Training for Task Force/Field*

Force Commanders,” dated November 7, 2003, identifies 20 items relating to legal matters. Demonstrators’ rights are not one of the issues.

5. The police were trained to address massive civil disturbance. According to the After-Action Report, intelligence indicated some groups might attempt to “violently disrupt the FTAA conference and cause damage to both private and public property,” as well as “overrun and occupy government buildings.” Police anticipated “mass arrests.” *There were no united massive disturbances. There were two disturbances that resulted in large number of arrests and several smaller incidents.*
6. Media coverage and police preparation emphasized “anarchists, anarchists, anarchists” and this contributed to a police mindset to err, when in doubt, on the side of dramatic show of force to preempt violence rather than being subject to criticism for avoidable injury and destruction based on too reserved a presence of police force. *The quote is from Major Battle, the MDPD incident commander for the FTAA event, who expressed a determination not to fail in the protection of innocent citizens and accepted responsibility for the MDPD operational plan design and execution.*
7. The police were prepared to address potential terrorist activity and Weapons of Mass Destruction (WMD). *There was no evidence of terrorist or that WMD’s were actually found during FTAA week but the possibility was a factor in preparations for the event.*
8. Only government lawyers were used in MDPD training and on the scene consultations with the police during the event. *The lack of involvement of volunteer counsel from the private sector or civil liberty focused organizations may have contributed to questionable dispersal orders or their execution.*
9. Captain Rasmussen testified that officers were trained to address problem individuals in crowds and to isolate them. *MDPD dispersed the peaceful demonstration outside the jail on November 21, 2003 because police officers observed two demonstrators collecting rocks. A police photograph shows a young man with a box, wearing a T-shirt with the number 37 on the back. In this case, MDPD chose to address the demonstrators rather than the “problem individual.”*
10. The overwhelming riot-clad police presence, when there was no civil disturbance, chilled citizen participation in permitted and lawful demonstrations and events. *Some described Miami as a “police state.” Rev. Dr. Donna Schaper testified that police in riot gear blocked access to an ecumenical worship service at the First United Methodist Church on November 18, a time when no demonstrations were occurring.*
11. MDPD officers in “riot gear” had no visible name or number identification, hindering accountability via citizen complaints. *Given that there were about 40 different law enforcement agencies involved, citizens found it difficult to identify individual police officers or their departments. The proper identification of police officer is essential for public accountability.*

12. The IRP received 27 complaints about police actions during the FTAA events. *Most individual complaints were generic grievances that failed to identify particular wrongdoers.*
13. Some groups urged citizens not to file complaints with the IRP or CIP. *At the January 15 joint CIP-IRP meeting MAD stated, "As such, Miami Activist Defense [MAD] has encouraged people with pending criminal charges or contemplating civil rights claims to not file complaints with either the IRP or the CIP."*
14. MDPD assumed responsibility for all closures of Metrorail and Metromover stations, and service suspensions. *MDPD made these decisions based on intelligence reports.*
15. Insufficient time to disperse was given to some demonstrators arrested following the Jail Protest Demonstration on Friday afternoon. *Video tapes document individuals being arrested even though they began to disperse prior to the 2 minute deadline announced by megaphone.*
16. The MDPD Operational Plan was not made available for review to assess the extent to which it was designed to protect the rights of citizens to exercise their first amendment rights. *A national broadcast of Now with Bill Moyers addressed "the criminalization of dissent" as an issue during the FTAA police actions and without access to the undisclosed MDPD or MPD Operational Plans it is not possible to evaluate this concern.*
17. The expense for the multi-agency FTAA law enforcement response is estimated to exceed \$24,000,000, an amount much higher than the reported \$8,500,000 in Federal funds available for reimbursement, dedicated for the war on terrorism. *The Miami Herald itemized costs for different agencies that indicated that MDPD expenses were much higher than that of MPD, the designated lead law enforcement agency for this event.*

Use of Force

18. The two uses of less than lethal weapons, specifically "pepper spray" canisters and "pepperball" munitions, did not conform to established standard operating procedures (SOP) or more recent policy directives. *The one reported deployment of a pepper spray canister occurred without exhausting more reasonable means to control and there was an initial failure to complete a "Use of Force to Control Report" on the deployment of three rounds of pepperball munitions.*
19. Each police agency had the discretion to take independent action. *The use of "tear gas" by Miami Beach Police (MBPD) was not controlled by agreements that had been reached with demonstrator coalition representatives.*

Prisoner Processing

20. There was no systematic problem with prisoner processing by MDPD or C&R. Most prisoners were processed at the FTAA prisoner processing site located at the Earlington Heights Metrorail station. The City of Miami Police Department (MPD) and MDPD had independent processing sites at opposite ends of this same location. MPD used their facility

to process those arrested by its partner agencies. *A few of those detained complained about handcuffs that were too tight during prisoner processing. No one filed a complaint with MDPD or Corrections during actual detention; however some complaints were filed after the fact.*

21. The IRP received no evidence of sexual abuse, although allegations of sexual abuse during prisoner processing were raised at more than one public meeting by the same person.
22. Some arrested demonstrators were subjected to improper arrest procedures. *There is testimony that officers left arrestees' property on the street, a violation of MDPD Departmental Manual 18-02.5.I: "Personal property...shall be transported with the prisoner..." and violation of the FTAA Property Policy which states: "Prisoner property and evidence will be transported to the [Prisoner Processing Site]PPS." The IRP referred a complaint, in which abandonment of prisoners' property is an allegation, to Internal Affairs for investigation.*
23. Arrestees were handcuffed from the time they were arrested until they were secured in Corrections Facility. That included time at the arrest site, the time in transport to the prisoner processing site, time at the prisoner processing site, and the transport to the jail. MDPD policy states that: "Handcuffs shall not remain on prisoners for unreasonable periods of time, i.e., when prisoners may be otherwise properly secured." There is no C&R policy that addresses the length of time a prisoner may be handcuffed." *Some arrestees provided testimony of being handcuffed for more than eight hours. MDPD staff testified that handcuffs were temporarily removed when prisoners had to sign papers or use the restroom. Corrections staff testified that handcuffs were removed once in the actual jail.*
24. Some prisoners may not have had access to restroom facilities or water at the Prisoner Processing Site. *Two detainees arrested by Broward Sheriff's Office (BSO) reported they were not provided water and rest room facilities until they reached the jail about 8 hours after being arrested. Both recalled that a man named "Ricky" soiled himself after begging for medical attention for pain in his shoulder. MDPD and Corrections staff indicated no knowledge of the event and stated that water and toilets were available when requested.*
25. Neither MDPD nor Corrections have a written policy addressing transport of chemically contaminated detainees. *Some arrestees contaminated with pepper spray may have been transported with non-contaminated arrestees.*
26. Most of those arrested by MDPD were from out of town. *About 82% of the MDPD arrest forms reviewed indicate arrestees were not from Florida.*
27. There is no support for the statement found in the MDPD After-Action Report that: "The courts assisted by staggering bond hearings and releases so that arrestees were not able to quickly return to the conference site." *This quote is from the MDPD After-Action Report Executive Summary, Page 6. No one from MDPD or Corrections has since acknowledged such policy or practice. The Administrative Office of the Courts responded to an inquiry about the statement by saying that the Court increased the number of bond hearings "to*

process arrested demonstrators in a timely fashion, rather than delaying their ability to quickly return to the conference site.”

28. All media personnel were not treated equally, some being subject to selective arrest and others not. *Video tapes provided by a demonstrator and MDPD, of Friday afternoon arrests, documents someone saying “she’s not with us” immediately prior to the arrest of someone not employed as embedded media.*

29. Most arrest charges did not stand up to scrutiny. *The MDPD After-Action Report states, “...most arrests made by MDPD officers resulted in probable cause findings by judges.” However, some did not and were dismissed at bond hearing. Staff looked at 82 MDPD arrests on November 21, which resulted in 102 charges filed by the SAO. As of 5/16/04:*

Nolle Pros	Acquitted	Deferred Prosecution Program	Dismissed	Withheld adjudication w/ fine & cost	Dropped, Sealed or Pending
47	8	11	1	16	19

30. The State Attorney’s Office has not provided a breakdown of dispositions. *Miami Activist Defense (MAD) at www.stopftaa.org/legal reports few convictions. This website contains a copy of a pending civil rights lawsuit filed by the National Lawyers Guild (NLG).*

Labor Community concerns

31. AFL-CIO and Florida Alliance for Retired Americans (FLARA) had specific plans for the disembarkation and embarkation of their bus passengers. *MDPD was not provided bus routes or details of where retired senior demonstrators were to disembark. Some seniors had to walk long distances to arrive at the amphitheatre site and some busses were turned away and returned home.*

32. MDPD had some streets blocked after the march and there was major confusion regarding the location of the busses. MDPD did not block exits from I-95 or I-395. *Two FLARA members, along with about 13 other people, were arrested by Broward Sheriff’s Office (BSO) while following MDPD directions as to where they could and could not walk. MDPD Lt. Robert Brown had a “discussion with the BSO officers, but did not interfere with their arrests.”*

33. The police response was successful in protecting the FTAA ministerial from disruption but was not successful in protecting the anti-FTAA peaceful demonstrations from being disrupted. MDPD did not give equal consideration to the protection of demonstrators civil rights as it did to the protection of the FTAA ministerial. *There was no balanced consideration of duty evident in police deployment of forces. Actions to show police preparedness to protect the fence from possible attack were more evident than actions to protect committed peaceful protestors from police actions that would limit the protest.*

Recommendations:

1. That MDPD identify and commend those officers and supervisors who performed their duty with distinction, upholding the departments mission statement at all times when faced with taunts and obscenities by misbehaving protestors.
2. That MDPD commend Thomas Guilfoyle, Esq., Police Legal Advisor, and Major Louis A. Battle for outstanding commitment to improved police/community relations, based on their performance before concerned citizens on the occasion of multiple IRP committee meetings and public hearings.
3. That MDPD assure there is one unified command and control system, where every agency involved knows what the others have as assets to the effort and everyone is committed to a common goal.
4. That MDPD develop training materials, for large demonstration preparation, that proactively address protesters' constitutional rights and encourage officers to enhance trust in government by engaging visitors with respectful treatment that is balanced.
5. That MDPD, when preparing for events such as this one, seek pro-bono legal training and consultation assistance from local bar association volunteers to assure that constitutional rights preparation is done by private sector attorneys.
6. That MDPD participate in coordinated field force drills and training with other involved law enforcement agencies, at the same time and place, to assure that independent actions are limited and a joint operational plan is executed.
7. That MDPD concern itself with the protection of disruption of lawful demonstrations as of equal importance to the protection of the subject event from disruptions.
8. That MDPD reserve show of field forces in "riot gear" to proportionate situations that are unambiguously violent or combative in nature.
9. That MDPD clearly mark police armor and tactical uniforms so that every individual officer is identifiable from a reasonable distance and can be held accountable for his/her actions.
10. That MDPD establish specific standards pertaining to the execution of dispersal orders, with sample deadlines in minutes, to insure that police movements that may result in arrests do not compromise prosecution of those who violate the order.
11. That MDPD revise policy and practice so as to insure that every less-lethal munitions use is accounted for, that all use of less-lethal weapons, including "pepper spray", occurs only after all reasonable alternative action has been exhausted.

12. That Corrections revise policy and practice so as to effectively set a standard as to the length of time a prisoner may be handcuffed and that would monitor assurance that water and toilet opportunity has been offered.
13. That MDPD specifically train officers in how to respond if they observe another officer, including anyone from another agency, take inappropriate action against lawful demonstrators.
14. That MDPD create a media policy which provides equal treatment for affiliated and independent media.
15. That the details of agreements made between a citizen group and a specific department be shared with all those in command of areas which are impacted by the agreements.
16. That MDPD take the initiative in communication with protester organizations and coalitions so that MDPD understands protestor expectations based on negotiations with other police agencies.